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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN JAMES AMADOR,

Defendant and Appellant.

B221359

(Los Angeles County
Super. Ct. No. BA343920)

APPEAL from a judgment of the Superior Court of Los Angeles County, George G. Lomeli, Judge. Affirmed as modified.

Tara K. Hoveland, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Kenneth C. Byrne and Julie A. Harris, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant, Steven James Amador, appeals following his nolo contendere plea to misdemeanor battery with injury on transit personnel. (Pen. Code,¹ § 243.3.) Defendant was placed on probation. As a condition of probation, defendant was ordered to pay restitution. Defendant argues that the trial court improperly: refused a post-plea request to have a physician appointed to assist with issues regarding restitution; imposed restitution for the medical expenses pursuant to section 1202.4, subdivision (f) to be paid directly to the victim's treating physician; and imposed restitution for the victim's personal property losses. We affirm the judgment as modified.

We view the evidence in a light most favorable to the judgment. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Elliot* (2005) 37 Cal.4th 453, 466; *People v. Osband* (1996) 13 Cal.4th 622, 690; *Taylor v. Stainer* (9th Cir. 1994) 31 F.3d 907, 908-909.) At approximately 2 a.m. on July 22, 2008, defendant was being driven by taxi driver, Georgiy Minosyan. Defendant was asleep when they arrived at his destination. Mr. Minosyan awakened defendant. Defendant got out of the taxi cab and walked toward the house without paying. Mr. Minosyan asked defendant to pay. Defendant threw some papers into the passenger seat of the cab indicating they constituted the fare. Defendant then walked toward his house. Mr. Minosyan again demanded payment. Defendant then telephoned the dispatcher. Both defendant and Mr. Minosyan spoke to the dispatcher. Defendant kicked Mr. Minosyan's taxi. Mr. Minosyan asked the dispatcher to call the police. Mr. Minosyan had an earphone on his ear. Defendant had some keys in his closed fist. Defendant hit Mr. Minosyan several times with the closed fist. Mr. Minosyan grabbed defendant. Mr. Minosyan and defendant fell to the ground. Defendant continued hitting Mr. Minosyan. The police arrived immediately thereafter. Mr. Minosyan suffered severe bruising to the left side of his face and ear. Mr. Minosyan was bleeding as a result of the assault. Mr. Minosyan's cellular phone was broken.

According to the probation report, Mr. Minosyan incurred medical expenses in the amount of \$5,140 for treatment of a brain contusion, cervical sprain, and facial laceration.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Mr. Minosyan received x-rays and physical therapy in the form of heat treatment, massage and ultrasound. Mr. Minosyan wore a cervical neck brace for a while. The probation report states Mr. Minosyan experienced \$1,190 in lost wages. Mr. Minosyan requested additional expenses for: property damage to his phone; lost wages; and damage to his taxi. The total restitution requested was \$6,694.00.

First, defendant argues the trial court should have appointed a physician to “review and dispute” Mr. Minosyan’s \$5,140 claimed medical expenses. Defendant’s nolo contendere plea included a requirement that he make restitution. The trial court set a restitution hearing date for April 29, 2009. On August 4, 2009, after numerous continuances, the prosecutor reported that the investigation revealed that Mr. Minosyan had incurred \$5,140 in medical expenses as well as other costs related to cellular phone replacement, lost wages and damage to the taxi. As noted, the \$5,140 figure appears in the March 3, 2009 probation report. The trial court continued the matter to allow defense counsel to conduct her own investigation.

On September 4, 2009, over seven months after defendant pled nolo contendere, the trial court called the matter for the restitution hearing. Defense counsel questioned the doctor’s charges indicated in the itemized billing. The trial court encouraged defense counsel to speak with the doctor. The hearing was continued to October 6, 2009. On October 6, 2009, over eight months after the entry of the nolo contendere plea, defense counsel reported that she continued to question the “ten massages” itemized in the medical bill. The prosecutor had spoken with the doctor. The prosecutor learned: “The treatment, as it is reflected on the bill, consists of several visits; the dates and times are listed. The treatment consists of three parts, the heat treatment, the massage, and the ultrasound. And [the doctor] says that’s the conventional treatment for the type of injury that the victim received. [¶] He was punched in the face, and officers saw injury to the cheek and ear, and he fell to the ground. [¶] And the victim was also issued a cervical, or neck, brace for a while. [¶] So I did speak to the doctor directly and he told me that was the essence of the therapy.” Defense counsel requested a “more detailed diagnosis and the reason” for Mr. Minosyan’s treatments. Defense counsel also requested an additional

hearing. The trial court then cited to *People v. Cain* (2000) 82 Cal.App.4th 81, 86, regarding the sufficiency of the receipts noting, “They appear to be reliable based - - coupled with [the prosecutor’s] explanation.” The trial court suggested that defense counsel produce whatever evidence she could to refute the evidence presented by the prosecutor. The trial court cautioned that defense counsel was not entitled to cross-examine the doctor, citing *Cain*. The matter was continued yet again to allow defense counsel to gather evidence.

On October 28, 2009, nearly nine months after defendant entered his nolo contendere plea, the restitution hearing resumed. Defense counsel requested a physician be appointed to review the charges attributed to Mr. Minosyan’s injuries. Defense counsel reported that she was unable to contact the victim’s treating physician. Further she was unsuccessful in subpoenaing him. The trial court again indicated a willingness to allow additional time for defense counsel to contact Mr. Minosyan’s physician, Dr. Levon Tebelekian. On November 12, 2009, defense counsel reported that she spoke to Dr. Tebelekian personally. Dr. Tebelekian stated that the victim had neck sprains. Defense counsel argued that \$5,140 was an excessive charge for such treatment. Defense counsel again requested the appointment of a physician to review the medical records to verify the services rendered.

In denying the request the trial court ruled: “[*People v. Cain*] 82 Cal.App.[4th] at 481, any documentary evidence, even of hearsay, is sufficient to establish a restitution order. It also goes on to say that the defendant does not have a Sixth Amendment right of confrontation at the sentencing stage at criminal [sic] a prosecution and/or with respect to restitution issues, so it is very limited. [¶] As long as there is a link, according to this court, whether it is convinced that the restitution at issue - - that there is a link between the loss and/or the injury, and the receipts presented, so I have seen nothing to the contrary and I am prepared to rule.” Thereafter, the trial court ordered defendant to pay restitution to Dr. Levon Tebelekian in the amount of \$5,140 and \$1,554 to Mr. Minosyan.

We review the trial court’s restitution order for abuse of discretion. (*People v. Giordano* (2007) 42 Cal.4th 644, 663; *People v. Moore* (2009) 177 Cal.App.4th 1229,

1231; *People v. Millard* (2009) 175 Cal.App.4th 7, 26; *People v. Tabb* (2009) 170 Cal.App.4th 1142, 1153; *In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.) The Court of Appeal has held: ““““When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.”” [Citations.]’ [Citation.] . . . ‘[T]he court’s discretion in setting the amount of restitution is broad, and it may use any rational method of fixing the amount of restitution as long as it is reasonably calculated to make the victim whole. [Citations.]’ [Citation.]” (*People v. Millard, supra*, 175 Cal.App.4th at p. 26; *People v. Tabb, supra*, 170 Cal.App.4th at p. 1153.) In *People v. Cain, supra*, 82 Cal.App.4th at pg. 86, our colleagues in the Court of Appeal for the Fourth Appellate District held: “The scope of a criminal defendant’s due process rights at a hearing to determine the amount of restitution is very limited: “A defendant’s due process rights are protected when [he or she gives] notice of the amount of restitution claimed . . . , and . . . has an opportunity to challenge the figures . . . at the sentencing hearing.”” [Citations.]” (See also *People v. Giordano, supra*, 42 Cal.4th at p. 662, fn. 6; *People v. Prosser* (2007) 157 Cal.App.4th 682, 692; *In re S.S.* (1995) 37 Cal.App.4th 543, 547.)

Section 1202.4 provides in part: “(a)(1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as the result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime. [¶] . . . (3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay . . . [¶] . . . [¶] (B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment. [¶] . . . [¶] (f) [I]n every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. . . . The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. . . . [¶] (1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. . . .

[¶] . . . [¶] (3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following: [¶] (A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible. [¶] (B) Medical expenses. [¶] . . . [¶] (D) Wages or profits lost due to injury incurred by the victim” Also, sections 1203.1 and 1202.4 permit the imposition of a restitution order as a probation condition. (*People v. Anderson* (2010) 50 Cal.4th 19, 29.)

Under these circumstances, we agree with the trial court that defendant's due process rights did not extend to the appointment of a physician to review Mr. Minosyan's medical records. Evidence Code section 730 provides in part, “When it appears to the court . . . that expert evidence is or may be required by the court or by any party to the action, the court . . . may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert *at the trial of the action* relative to the fact or matter as to which the expert evidence is or may be required.” (Italics added.) The appointment of a physician to assist a defendant's attorney at a sentencing hearing is legally unauthorized by statute. (*People v. Stuckey* (2009) 175 Cal.App.4th 898, 908-910; see also *In re Eric A.* (1999) 73 Cal.App.4th 1390, 1394, fn. 4 [appointment of a professional to assess believability of a witness is subject to the trial court's discretion].)

In any event, defendant had more than adequate notice of not only the amount of restitution requested but also a detailed medical billing description of the treatment provided by Dr. Tebelekian. Between August 4 and November 12, 2009, defense counsel had the opportunity to investigate the medical records and present evidence disputing their legitimacy. Defense counsel stated that she had spoken to Dr. Tebelekian and learned that Mr. Minosyan had suffered neck sprains. Other than indicating that she thought the charges were excessive for the treatment, defense counsel did not establish

that the medical expenses were unwarranted. Moreover, there was no indication that defendant even considered hiring his own expert rather than have one appointed by the court. The trial court could reasonably impose the restitution based upon the charges submitted by the treating physician.

Second, defendant argues that the trial court improperly awarded \$364 restitution to replace Mr. Minosyan's cellular telephone, headset and for the taxi repairs because the prosecution did not make a prima facie showing concerning the expenses. We disagree. In *People v. Millard*, *supra*, 175 Cal.App.4th at page 26, our colleagues in the Court of Appeal for the Fourth Appellate District held: "At a victim restitution hearing a prima facie case for restitution is made by the People based in part on a victim's testimony on, or other claim or statement of, the amount of his or her economic loss. [Citations.] 'Once the victim has [i.e. the People have] made a prima facie showing of his or her loss, the burden shifts to the defendant to demonstrate that the amount of the loss is other than that claimed by the victim. [Citations.]' [Citation.]" (See also *People v. Keichler* (2005) 129 Cal.App.4th 1039, 1048.) As set forth above, we review the trial court's restitution order for abuse of discretion: "The abuse of discretion standard is 'deferential,' but it 'is not empty.' [Citation.] '[I]t asks in substance whether the ruling in question "falls outside the bounds or reason" under the applicable law and the relevant facts [citations].' [Citation.]" (*People v. Giordano*, *supra*, 42 Cal.4th at p. 663, quoting *People v. Williams* (1998) 17 Cal.4th 148, 162; see also *People v. Baker* (2005) 126 Cal.App.4th 463, 469 ["If the circumstances reasonably justify the [trial court's] findings,' the judgment may not be overturned when the circumstances might also reasonably support a contrary finding"].)

Defendant argues: "Unlike the medical expenses which were supported by an itemized bill from the doctor and the lost wages which were supported by a letter from the victim's employer and from statements from the victim's son, these other items were wholly undocumented." Our colleagues in the Court of Appeal for the Fourth Appellate District recently held: "Section 1202.4 does not, by its terms, require any particular kind of proof. However, the trial court is entitled to consider the probation report, and, as

prima facie evidence of loss may accept a property owner's statement made in the probation report about the value of stolen or damaged property. [Citation.]" (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543; *People v. Foster* (1993) 14 Cal.App.4th 939, 946; see also *People v. Tabb, supra*, 170 Cal.App.4th at p. 1154.) In this case, Mr. Minosyan's son advised the probation officer of the amount of the losses. The trial court and defense counsel were given copies of the claim. Defense counsel did not object to the charges in question when they were presented. It was not until the November 12, 2009 hearing that defense counsel even mentioned that there were no receipts related to the victim's cell phone, headset and taxi damage. The prosecutor established a prima facie claim for the losses. Defendant has not disproven the victim's losses. As a result, the trial court could reasonably order restitution for the losses in question. (*People v. Gemelli, supra*, 161 Cal.App.4th at p. 1546; *People v. Foster, supra*, 14 Cal.App.4th at p. 948.)

Finally, defendant argues that the trial court improperly ordered payment of Dr. Tebelekian's bill directly without determining whether the charges were covered by insurance. Defendant further argues that third parties are not entitled to restitution under section 1202.4. Preliminarily, although defense counsel inquired about the victim's medical insurance coverage at the August 4, 2009 restitution hearing, she never revisited the issue. Defense counsel did *not* present evidence Mr. Minosyan had insurance or that any of the medical charges had been paid either in full or part. Nor did defendant submit evidence that the medical charges were inaccurate or unreliable or that the doctor would accept a lesser amount as full payment for services rendered. On such a silent record, we must assume the charges would not be reduced. (See *People v. Duong* (2010) 180 Cal.App.4th 1533, 1540; *In re K.F.* (2009) 173 Cal.App.4th 655, 664; *People v. Hove* (1999) 76 Cal.App.4th 1266, 1275 [defendant must come forward with contrary information to challenge the amount of the victim's loss].)

Also, the trial court could properly order that the restitution be paid directly to the treating physician. In *People v. Anderson, supra*, 50 Cal.4th at page 27, our Supreme Court compared the strict restitution provisions of section 1202.4 with the broad terms of

section 1203.1² applicable to probationary conditions: “We noted in [*People v.*] *Carbajal* [(1995)]10 Cal.4th 1114, that under section 1203.1, ‘California courts have long interpreted the trial courts’ discretion to encompass the ordering of restitution as a condition of probation even when the loss was not necessarily caused by the criminal conduct underlying the conviction.’ (*Carbajal*, at p. 1121.) As we explained: ‘Under certain circumstances, restitution has been found proper where the loss was caused by related conduct not resulting in a conviction [citation], by conduct underlying dismissed and uncharged counts [citation], and by conduct resulting in an acquittal [citation]. There is no requirement the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable, nor is there any requirement the order reflect the amount of damages that might be recoverable in a civil action. [Citation.]’ (*Carbajal*, at p. 1121.)”

Our Supreme Court explained that Article I, section 28, subdivision (b) of the California Constitution was implemented by the Legislature in the enactment of section 1202.4. The provisions of section 1202.4, as set forth above, limit the restitution to direct victims of crime. (*People v. Anderson, supra*, 50 Cal.4th at pp. 27-28.) However, our Supreme Court concluded: “Trial courts continue to retain authority to impose restitution as a condition of probation in circumstances not otherwise dictated by section 1202.4. In both sections 1203.1 and 1202.4, restitution serves the purposes of both criminal rehabilitation and victim compensation.” (*People v. Anderson, supra*, 50 Cal.4th at p. 29.) Our Supreme Court found the trial court’s restitution order for direct payment to a hospital for the medical expenses of the deceased victim “renders defendant accountable

² Section 1203.1 provides in part: “(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. . . . [¶] . . . [¶] (j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer”

for the financial harm he caused and contributes to his reformation and rehabilitation.”
(*People v. Anderson, supra*, 50 Cal.4th at p. 34.)

The restitution in this case was imposed as a condition of summary misdemeanor probation based upon defendant’s nolo contendere plea. At the time defendant entered his plea, the prosecutor advised him: “When you come back, we will have a dollar amount suggested to the court for the amount of damage that may have been done in this case, and you’ll be ordered to pay that. [¶] Do you understand that?” Defendant responded, “Yes.” When the trial court placed defendant on probation, it indicated defendant must, “[m]ake restitution” to Mr. Minosyan. Thereafter, the trial court imposed additional probationary conditions. During one of the many subsequent restitution hearings, the trial court noted, “[Defendant] did, at the time of his plea, agree to pay restitution in this matter.” Although the minute orders mistakenly state the restitution was imposed pursuant to section 1202.4, the oral pronouncement of the sentencing court is controlling. (*People v. Delgado* (2008) 43 Cal.4th 1059, 1070; *People v. Mitchell* (2001) 26 Cal.4th 181, 185.) The restitution order, imposed as a probation condition, rendered defendant accountable for the financial harm caused to Mr. Minosyan. Further, by requiring him to pay restitution, the trial court could reasonably conclude the probationary order served his reformation and rehabilitation. (*People v. Anderson, supra*, 50 Cal.4th at pp. 31, 34; *People v. Birkett* (1999) 21 Cal.4th 226, 235; *People v. Lent* (1975) 15 Cal.3d 481, 486 [court may impose probation conditions requiring the probationer to do acts not otherwise mandated by law if they are “reasonably related to the crime of which the defendant was convicted or to future criminality”]; see also *People v. Tarris* (2009) 180 Cal.App.4th 612, 624 [“Because a defendant has no right to probation, the trial court can impose probation conditions that it could not otherwise impose . . .”].) The trial court could reasonably exercise its broad discretion in probationary matters to order restitution payment directly to Dr. Tebelekian.

Following our request for further briefing, the parties agree that the trial court should have imposed a \$30 Government Code section 70373, subdivision (a)(1) court facilities assessment. We may correct an unauthorized sentence at any time. (*In re*

Sheena K. (2007) 40 Cal.4th 875, 886; *People v. Smith* (2001) 24 Cal.4th 849, 854.) The judgment is modified to impose a \$30 Government Code section 70373, subdivision (a)(1) court facilities assessment. The trial court is to actively and personally insure the clerk accurately prepares a correct amended minute order reflecting imposition of the court facilities assessment. (*People v. Acosta* (2002) 29 Cal.4th 105, 109, fn. 2; *People v. Chan* ((2005) 128 Cal.App.4th 408, 425-426.)

The judgment is modified to impose a \$30 Government Code section 70373, subdivision (a)(1) court facilities assessment. The judgment is affirmed in all other respects.

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TURNER, P. J.

We concur:

ARMSTRONG, J

KRIEGLER, J.